

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Bureau of Technical Support
625 Broadway, 11th Floor, Albany, NY 12233-7020
P: (518) 402-9543 | F: (518) 402-9547
www.dec.ny.gov

August 10, 2018

EC188, LLC
Attn: Mr. William Paladino
295 Main Street, Suite 210
Buffalo, NY 14203

RE: Brownfield Cleanup Application
188 West Utica Street
Site No. C915335

Dear Mr. Paladino:

The New York State Department of Environmental Conservation (DEC) has received your application for participation in the Brownfield Cleanup Program (BCP) pursuant to Environmental Conservation Law (ECL) § 27-1401 et seq. We are pleased to advise you that your application has been determined to be complete based upon DEC's initial non-substantive review of your application package. While the application is complete, DEC may require additional information regarding site contamination in order to demonstrate that the site requires remediation pursuant to ECL § 27-1407(1). Additionally, if your application also seeks a determination that the site is eligible for tangible property credits under ECL § 27-1407(1-a), DEC may require additional information in order to make such a determination. If you propose additional material to supplement this application, DEC may consider it at its sole discretion. If additional material or information supplied significantly changes the scope of the site subject to the application, the Department may require you to publish another public notice of availability of the complete application. DEC would then adjust the time frame specified under ECL § 27-1407(6) for notifying you that your request for participation in the BCP is either accepted or rejected.

Pursuant to ECL § 27-1407(5), a 30-day public comment period is to begin after DEC's determination that an application is complete. DEC will publish a notice of the receipt of your application seeking public comment in the "Environmental Notice Bulletin." In accordance with the ECL and DEC regulations (see 6 NYCRR § 375-3.4(b)), you must notify, in writing, all parties on the site contact list¹ of the availability of the complete application for public review and comment.

In order to facilitate the notifications, DEC has prepared the enclosed documents for your use as Public Notices along with instructions. You are responsible for placing a copy of the application (including any attachments) and copies of all other related documents such as any site assessments, investigation reports, and/or remedial work plans in the document repository

¹ The site contact list includes (see section 375-1.2(as)) all interested "persons, government agencies, groups or organizations, including, but not limited to, the chief executive officer and zoning board of each county, city, town and village in which such site is located, the public water supplier which serves the area in which such site is located, any site residents, adjacent property owners, any person who has requested to be placed on the site contact list, and the administrator of any school or day care facility located on the site for the purposes of posting and/or dissemination at the facility. Provided, however, that where the site or adjacent real property contains multiple dwelling units, the remedial party may propose an alternative method, consistent with the citizen participation goals set forth in section 375-1.10, for providing such notice in lieu of mailing to each individual."



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before the start of the public comment period. The language in the enclosed Public Notice must be used without alteration in the newspaper notice that you have published in accordance with sections 375-3.2(f) and 375-3.10.

The shorter enclosed public notice must be provided to a local newspaper servicing the area including the site for publication no later than August 22, 2018. By August 21, 2018, the other notifications specified above must be distributed and documents placed in the repository. To the extent that the mailings and publications are not completed in accordance with these time frames, DEC will extend the comment period for a period sufficient to comply with the required public notice requirements running from the latest of these mailings and publications.

Within five days of the mailings, you must submit a "certificate of mailing" using the enclosed form. Additionally, you must submit a proof of publication provided by the newspaper within three days of your receipt of such document. Please submit these documents to DEC's Project Manager:

Damianos Skaros
NYS Dept. of Environmental Conservation – Region 9
270 Michigan Avenue
Buffalo, NY 14203
damianos.skaros@dec.ny.gov

DEC will use all best efforts to notify you if the application is accepted or rejected within five days after the close of the public comment period. We look forward to working cooperatively to address the environmental conditions at the brownfield site and return this property to productive use.

Sincerely,



Kelly A. Lewandowski, P.E.
Chief, Site Control Section

Enclosures

ec w/enc.: D. Skaros, Project Manager
M. Cruden, Director, Remedial Bureau E
C. Staniszewski, RHWRE, Region 9
J. Andaloro, NYSDEC – OGC, Remediation Bureau
J. Dougherty, Project Attorney
M. Brady, Regional Attorney, Region 9
K. Anders, NYSDOH
C. Bethoney, NYSDOH Regional Chief
B. Anderson, Site Control Section
K. Lewandowski
William Paladino, Requestor's Representative (bpaladino@ellicottdevelopment.com)
Michael Lesakowski, Requestor's Consultant (mlesakowski@benchmarkturnkey.com)
Craig A. Slater, Requestor's Attorney (cslater@cslaterlaw.com)

**Brownfield Cleanup Program
Public Notice Instructions to Requestor²**

1) Newspaper Notice

- a) The Requestor must publish the language in the enclosed public notice with the heading "Notice to be published in newspaper" without modification, in a local newspaper of general circulation that services the area that includes the site not later than the date specified in the Division of Environmental Remediation's (DER) cover letter. The notice must be a paid newspaper advertisement, prominently located in the community bulletin section or comparable local section of the newspaper (not as a legal notice). The Requestor must publish the notice in English and in any other language spoken by a significant number of people within the site community.
- b) The Requestor must submit a proof of publication of the newspaper notice to the DER Project Manager by the date specified in the DER cover letter.

2) Requestor's Instructions to Newspapers Regarding Printing the Public Notice

- a) The enclosed public notice with the heading "Notice to be published in newspaper" announces the receipt of a complete Brownfield Cleanup Program application package by the New York State Department of Environmental Conservation. Pursuant to ECL Section 27-1405(22), the public notice must be a paid newspaper advertisement, prominently located in the community bulletin section or similar local section of the newspaper (not as a legal notice). The public notice must be published by the date specified. Please provide a proof of publication to the DER Project Manager as soon as possible.

3) Site Contact List

- a) The Requestor must mail the enclosed public notice with the heading "Notice to be distributed to those on contact list included in the BCP Application", without modification, to the parties on the site contact list included with the application. The mailing must be performed by the date specified in the DER cover letter. No other materials can be mailed with this notice with the exception of the instructions provided in #4a below.
- b) The Requestor must complete the certificate of mailing and submit it to the DER Project Manager by the date specified in the DER cover letter (see enclosed certificate of mailing form).

4) Requestor's Instructions to Parties on the Site Contact List Receiving the Public Notice

- a) The enclosed public notice announces the receipt of a complete Brownfield Cleanup Program application package by the New York State Department of Environmental Conservation. Pursuant to ECL Section 27-1407(5), a public notice announcing the receipt of an application must be sent to parties on the site contact list. Please read the enclosed public notice and review the application package in the site document repository for further information regarding the application and how to submit comments.

5) Document Repository

- a) The Requestor must put the application package (application and all attachments) in the site document repository specified in the application prior to the start of the public comment period.

² A requestor (§ 375-3.2(i)) is a person who has submitted an application to participate in the BCP whose eligibility has not yet been determined by DEC.

Notice to be published in newspaper:

**Public Notice
Fact Sheet**

The New York State Department of Environmental Conservation (DEC) has received a Brownfield Cleanup Program (BCP) application and Draft Remedial Investigation Work Plan from EC188, LLC for a site known as 188 West Utica Street, site ID #C915335. This site is located in the City of Buffalo, within the County of Erie, and is located at 188 West Utica Street. Comments regarding this application must be submitted no later than September 21, 2018. A copy of the application, Draft Remedial Investigation Work Plan and other relevant documents are available at the document repository located at Buffalo & Erie County Public Library, 1 Lafayette Square, Buffalo 14203. Information regarding the site and how to submit comments can be found at <http://www.dec.ny.gov/chemical/60058.html> or send comments to Damianos Skaros, Project Manager, NYSDEC, 270 Michigan Ave, Buffalo, NY 14203; damianos.skaros@dec.ny.gov; or call 716-851-7220.

To have information such as this notice sent right to your email, sign up with county email listservs available at www.dec.ny.gov/chemical/61092.html.

Notice to be mailed to those on contact list included in the BCP Application:

**Public Notice
Fact Sheet**

The New York State Department of Environmental Conservation (DEC) has received a Brownfield Cleanup Program (BCP) application and Draft Remedial Investigation Work Plan from EC188, LLC for a site known as 188 West Utica Street, site ID #C915335. This site is located in the City of Buffalo, within the County of Erie, and is located at 188 West Utica Street.

A copy of the application, Draft Remedial Investigation Work Plan and other relevant documents are available at the document repository located at Buffalo & Erie County Public Library, 1 Lafayette Square, Buffalo 14203.

There are several ways to comment on BCP applications. Comments can be submitted to the site Project Manager Damianos Skaros at NYSDEC, 270 Michigan Ave, Buffalo, NY 14203; via email at damianos.skaros@dec.ny.gov; or by calling 716-851-7220. All comments must be submitted by **September 21, 2018**.

Site information can be viewed by entering the site ID noted above at:
<http://www.dec.ny.gov/cfmx/extapps/derexternal/index.cfm?pageid=3>

We would also encourage those interested in receiving information on future activities at this site or any other site to sign up to DEC's Contaminated Sites Email List at:
<http://www.dec.ny.gov/chemical/61092.html>

What is the Brownfield Cleanup Program?

New York's Brownfield Cleanup Program (BCP) is designed to encourage private-sector cleanups of brownfields and to promote their redevelopment as a means to revitalize economically blighted communities. The BCP is an alternative to "greenfield" (land not previously developed or contaminated) development and is intended to remove some of the barriers to, and provide tax incentives for, the redevelopment of brownfields. Since its inception (2003), the BCP has catalyzed the cleanup of more than 300 contaminated sites statewide and incentivized redevelopment. There are more than 350 active sites in the BCP.

Additional information on the State's Brownfield program is available at DEC's website:
<http://www.dec.ny.gov/chemical/8450.html>

CERTIFICATION OF MAILING

Site Name: 188 West Utica Street

Site No.: C915335

I certify that I mailed on _____ a copy of the attached public notice by first class mail upon the person(s) on the attached mailing list, by depositing a true copy thereof, securely enclosed in a postpaid wrapper, in the Post Office box at _____ in the City of _____, New York, which box is under the exclusive care and custody of the United States Post Office.

Signature

Date

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Region 9
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7220 | F: (716) 851-7226
www.dec.ny.gov

September 26, 2018

EC188, LLC
Attention: William Paladino
295 Main Street, Suite 210
Buffalo, New York 14203

Dear Mr. Paladino:

188 West Utica Avenue Site
Site #: C915335
Buffalo, NY - Erie County
RI Workplan Comments

After review of the Remedial Investigation (RI) workplan dated June 2018, the Department of Environmental Conservation (Department), in collaboration with the New York State Department of Health, has the following comments that will need to be addressed before the workplan is approved. Once all comments are properly addressed, the workplan should be resubmitted for a comprehensive evaluation by the Department.

Comments on the proposed RI workplan:

1. Section 2.8.3 states that a total of ten (10) soil borings were completed across the site, but only eight (8) analytical testing results were noted in Table 1 of the workplan. Provide additional information on the soil borings which were not listed on Table 1, and why there were not analyzed by the laboratory.
2. All VOC and SVOC samples must be analyzed for Tentatively Identified Compounds (TICs). Table 2 of the workplan should be updated accordingly.
3. Given the historical usage of the site, additional analytical efforts should be performed to properly assess and characterize site conditions. A minimum of 5 soil samples should be analyzed for the full suite of analytical compounds including TICS. Additionally, full suite samples should be biased towards suspected source locations, at depths not characterized during previous investigations in order to close data gaps, and in portions of the site where limited sampling data is available (i.e. northern portion of the property).
4. All groundwater monitoring wells should be analyzed for the full suite of compounds, including TICs. Table 2 of the workplan should be updated accordingly.
5. Section 3.3.1 describes a target groundwater monitoring depth of approximately 25 to 30 fbg. If groundwater is not encountered within this target depth, what adjustments to the investigation will be performed to properly assess groundwater conditions? The workplan should provide additional information to address this potential scenario.
6. Table 2 of the workplan lists five (5) groundwater monitoring wells, while Figure 4 only lists four (4) wells. Please update the workplan to represent the proper number of monitoring wells.



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7. The current groundwater monitoring well configuration should be adjusted to properly assess groundwater conditions throughout the site. The Northern portion of the site appears to have a lack of monitoring as well as the potential source area.
8. If VOCs are identified within the groundwater or subsurface investigation, a soil vapor intrusion study will need to be performed. The workplan should be updated accordingly and include a sampling plan description in the event SVI testing is required.
9. Test pit 8 (TP-8) is labeled on Figure 4 of the workplan, but has no notation. Figure 4 should be updated accordingly.
10. The current workplan proposes the sampling of emergent contaminant compounds at two locations. Please include additional justification within the workplan that identifies why these locations were selected and if they are upgradient, downgradient, or in source locations. Additionally, all source areas should be monitored for emergent contaminants.
11. The workplan is for remedial investigation with an IRM component and a final remedy will not be evaluated until after this work is complete. Therefore, please remove any presumptive reference to a final remedy, anticipated cleanup track, or other final determinations.

If you have any questions, or would like to discuss these items further, feel free to contact me directly at 716-851-7220 or through e-mail Damianos.skaros@dec.ny.gov.

Sincerely,



Damianos T. Skaros, P.E.
Professional Engineer 1

DS/tl
Enclosure

Ec: Mr. Chad Staniszewski, NYSDEC
Ms. Harolyn Hood, NYSDOH
Mr. Michael Lesakowski, Benchmark Turnkey
Mr. Nathan Munley, Benchmark Turnkey
Mr. Craig Slater, The Slater Law Group



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

September 13, 2018

Damianos T. Skaros, PE
Division of Environmental Remediation
NYS Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

Re: **Remedial Investigation Work Plan**
188 West Utica Street
Site #C915335
Buffalo, Erie County

Dear Mr. Skaros:

I reviewed the draft June 2018 *Remedial Investigation Work Plan* for the referenced site and offer the following comments:

1. Please include the BCP site number on the document cover page and on all tables and figures.
2. The work plan should include a List of Abbreviations.
3. List of Tables. For accuracy, list Table 1 as presented, i.e., "Summary of Subsurface Soil/Fill Sample Analytical Results."
4. Section 3.0, Remedial Investigation Scope of Work. Soil vapor is an environmental medium that needs to be characterized the same as soil and groundwater. Please include soil vapor sampling as part of the remedial investigation and update the work plan accordingly.
5. Section 3.2.1, Surface Soil/Fill Investigation. Add one surface soil sample location to the grass-covered area that borders half of the northern site boundary.
6. Section 3.3, Groundwater Investigation. Add a fifth groundwater monitoring well in the vicinity of the SS-1 location for complete site coverage (refer to Figure 4).
7. Section 3.3.3.1, Emerging Contaminant Groundwater Sample Collection. DEC's protocol for sampling groundwater for per- and polyfluoroalkyl substances and 1,4-dioxane (dated April 2018) should be referenced and appended to the work plan.
8. FOP 004.5, Soil Vapor Sample Collection. The correct citation for this field operating procedure (FOP) is "The Guidance for Evaluating Soil Vapor Intrusion in the State of New York (NYSDOH, October 2006 and subsequent updates)." Subsequent updates refer to revisions made to the soil vapor/indoor air matrices in May 2017, which now includes a total of three matrices and eight volatile organic compounds. Please update the reference and matrices accordingly.

Thank you for the opportunity to review and comment on this document. If you have any questions, please contact me at (518) 402-7860.

Sincerely,

A handwritten signature in black ink, appearing to read "Harolyn L. Hood". The signature is fluid and cursive, with the first name "Harolyn" being more prominent than the last name "Hood".

Harolyn L. Hood
Public Health Specialist
Bureau of Environmental Exposure Investigation

cc: C. Bethoney / S. Selmer – e-File
A. Bonamici – NYSDOH WRO
M. Desiderio / M. Kowalski – ECDOH
M. Cruden – NYSDEC Central Office
C. Staniszewski – NYSDEC Region 9

**New York State Department of Environmental Conservation
Division of Environmental Remediation, 12th Floor**

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 Fax: (518) 402-9020

Website: www.dec.ny.gov

Certified Mail, Return Receipt Requested

EC188, LLC

William Paladino

295 Main Street, Suite 210

Buffalo, NY 14203

OCT 03 2018

Re: 188 West Utica Street
Tax Map ID No.: 100.46-1-13.1
Property County: Erie
Site No.: C915335

Dear Applicant:

Your application for the above-referenced Brownfield Cleanup Program ("BCP") project has been reviewed by the New York State Department of Environmental Conservation ("Department"). I am pleased to inform you that your request is accepted. The acceptance is based upon your participation as follows:

EC188, LLC is a Volunteer as defined in ECL 27-1405(1)(b). Tangible Property Tax Credit Status is described in Section II of the attached Brownfield Cleanup Agreement (BCA).

Based upon the facts and information in the application, information contained in the Department's records, and a timely return of the signed BCAs, the Department is prepared to execute a BCA for the above-described property. Enclosed are three original proposed BCAs. Please have an authorized representative sign all three originals where indicated and return them to my attention at 625 Broadway, Albany, New York, along with proof that the party executing the BCA is authorized to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. The BCA shall not be effective until it is fully executed by the parties. A reassessment of eligibility may result in a denial of the application if there are any changes to material facts and information before the BCA is fully executed. **Please note, if the BCA is not signed and returned to the Department within 60 days, the Department will consider the Application withdrawn and the offer to enter the BCP will be deemed rescinded.**

The Department looks forward to working with you on this project. The Department's project manager will assist you in completing your project. You can arrange a meeting to discuss the program's requirements and work plan. The work plan will determine the scope of work to be conducted and completed. You may contact the

Department's project team as set forth in Paragraph IV of the attached draft BCA to discuss the next steps.

Sincerely,



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

Enclosures:

Department's Copies:

ec: George. Heitzman, P.E.
Chad Staniszewski, P.E.
Jennifer Andaloro, Esq.
Kelly Lewandowski, P.E.
Damianos Skaros, P.E.
Jennifer Dougherty, Esq.

Applicant's Copies:

ec: William Paladino (bpaladino@ellicottdevelopment.com)
Craig A. Slater (cslater@cslaterlaw.com)
Michael Lesakowski (mlesakowski@benchmarkturnkey.com)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Bureau of Program Management
625 Broadway, 12th Floor, Albany, NY 12233-7012
P: (518) 402-9764 | F: (518) 402-9722
www.dec.ny.gov

October 22, 2018

EC188, LLC
Attn: William Paladino
295 Main Street, Suite 210
Buffalo, NY 14203

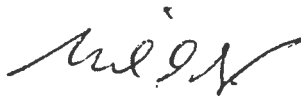
**RE: 188 West Utica Street
Site No. C915335
Location: 188 West Utica Street
Erie County
Buffalo, New York**

Dear Mr. Paladino:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for Site C915335, 188 West Utica Street Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Jennifer Dougherty, Esq. at Jennifer.dougherty@dec.ny.gov.

Sincerely,



Michael J. Ryan, Director, P.E.
Division of Environmental Remediation



Department of
Environmental
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C915335-09-25**

188 West Utica Street
DEC Site No.: C915335
Located at: 188 West Utica Street
Erie County
Buffalo, NY 14222

Hereinafter referred to as "Site"

by:

EC188, LLC
295 Main Street, Suite 210, Buffalo, NY 14203

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation ("Department") is authorized to administer the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Applicant submitted an application received by the Department on July 3, 2018; and

WHEREAS, the Department has determined that the Site and Applicant are eligible to participate in the BCP.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Applicant Status

The Applicant, EC188, LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Tangible Property Tax Credit Status

The Site is not located in a City having a population of one million or more. It is therefore presumed that the Site is eligible for tangible property tax credits.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 1.110 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 100.46-1-13.1
Street Number: 188 West Utica Street, Buffalo
Owner: EC188, LLC

IV. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicant shall be sent to:

Damianos Skaros
New York State Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Ave
Buffalo, NY 14203-2915
damianos.skaros@dec.ny.gov

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Kevin Malone (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
kevin.malone@health.ny.gov

Jennifer Dougherty, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
270 Michigan Ave
Buffalo, NY 14203-2915
jennifer.dougherty@dec.ny.gov

2. Communication from the Department to Applicant shall be sent to:

EC188, LLC
Attn: William Paladino
295 Main Street, Suite 210
Buffalo, NY 14203
bpaladino@ellicottdevelopment.com

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicant provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.


B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

THIS BROWNFIELD CLEANUP AGREEMENT IS
HEREBY APPROVED, Acting by and Through the
Department of Environmental Conservation as Designee
of the Commissioner,

By:



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

OCT 22 2018

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, and agrees to be bound by this Agreement.

EC188, LLC

By: William Paladino

Title: Authorized Person

Date: 10/9/18

STATE OF NEW YORK)

) ss:

COUNTY OF)

On the 9th day of October in the year 2018, before me, the undersigned, personally appeared William Paladino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Lori E. Carbaugh

Signature and Office of individual
taking acknowledgment

LORI E. CARBAUGH
Notary Public, State of New York
Reg #02CA6226718
Qualified in Erie County
My Commission Expires August 16, 2022

DATE: JUNE 2018
CRAFTED BY: CME

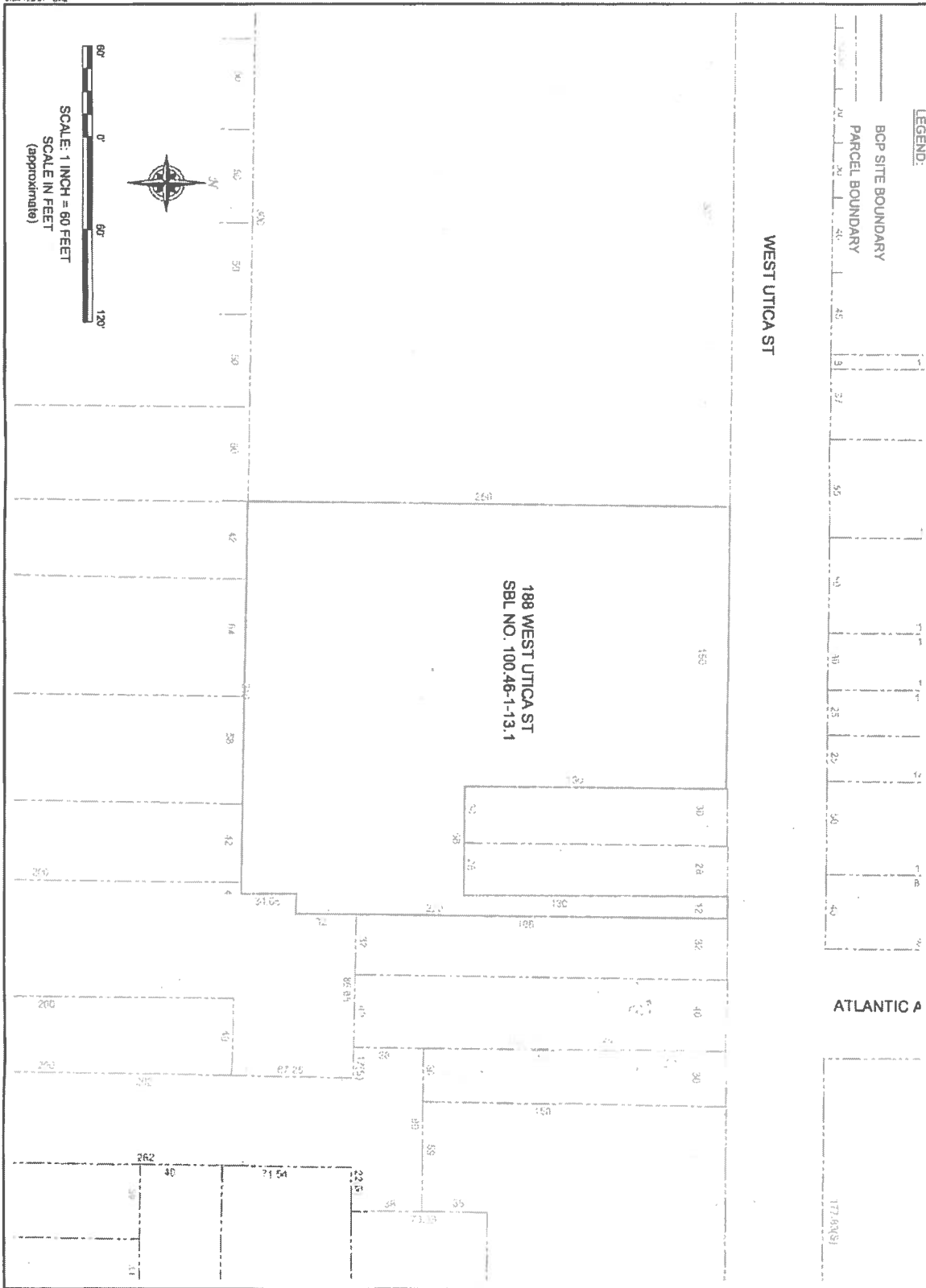


FIGURE 3

TAX MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION
188 WEST UTICA STREET SITE
BUFFALO, NEW YORK
PREPARED FOR
EC188, LLC



2055 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 868-0836

JOB NO.: 0136-018-002

EXHIBIT A

SITE MAP

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "BCA" or "Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (herein after "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of Environmental Conservation Law (ECL) § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. In addition, Applicant shall include with every report submitted to the Department a schedule for the submission of any subsequent work plan required to meet the requirements of ECL Article 27 Title 14. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with

ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs (Applicable only to Applicants with Participant Status)

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5(b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of
Environmental
Conservation
625 Broadway
Albany, New York 12233-7012

D. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5(b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2) and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement,

Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The

Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved

by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph V of Appendix A of this Agreement, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any

disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, if applicable, and VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant

shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made

in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least

7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Region 9
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7220 | F: (716) 851-7226
www.dec.ny.gov

April 17, 2019

EC188, LLC
Attn: Mr. William Paladino
295 Main Street, Suite 210
Buffalo, NY 14203

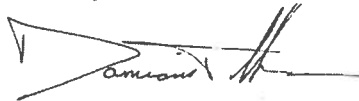
Dear Mr. Paladino:

188 West Utica Street Site
Site #C915335
Buffalo, NY - Erie County
Remedial Investigation Work Plan

The Department has completed its review of the revised Remedial Investigation (RI) Work Plan for the subject site, received on April 15, 2019 from Mr. Nathan Munley of Benchmark Environmental Engineering & Science, PLLC, in association with Turnkey Environmental Restoration, LLC. The Department's comments on an earlier version of the Work Plan have been satisfactorily addressed. The April 2019 revised Work Plan is hereby approved.

Please confirm that a copy of the Work Plan has been placed in the local public library, and contact me at: Damianos.Skaros@dec.ny.gov or by telephone (716) 851-7220 to discuss the scheduling of the various tasks.

Sincerely,



Damianos T. Skaros, P.E.
Professional Engineer 1

DS/dpp

ec: Mr. Chad Staniszewski, NYSDEC
Mr. Chris Boron, Turnkey Environmental Restoration, LLC
Ms. Harolyn Hood, NYS Department of Health
Mr. Craig Slater, Esq., Slater Law Group
Mr. Mike Lesakowski, Benchmark Turnkey LLC
Mr. Nathan Munley, Benchmark Turnkey LLC



Department of
Environmental
Conservation